

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 25, 2002

PETITION OF

VIRGINIA BANKERS ASSOCIATION

CASE NO. BFI-2002-00015

ORDER REQUIRING BRIEFS AND REQUESTS FOR HEARING

On June 7, 2002, the Virginia Bankers Association ("VBA" or "Petitioner") filed a petition with the State Corporation Commission ("Commission"), pursuant to 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure ("Rules"). Therein, the VBA contended, *inter alia*, that the Bureau of Financial Institutions ("BFI") incorrectly approved an application by DuPont Community Credit Union ("DuPont") to expand its field of membership. The VBA specifically contends that the BFI failed to adhere to the requirements of § 6.1-225.23 B 3 of the Code of Virginia by approving DuPont's application to expand its field of membership to include persons who live, work, worship, or attend school in, and businesses and other legal entities located in, the counties of Augusta, Bath, Highland, Rockbridge, and Rockingham, and the independent cities of Buena Vista, Lexington, Harrisonburg, Staunton, and Waynesboro. The VBA asserts that the Virginia Credit Union Act does not permit DuPont's common bond to be based on the aforementioned five counties and five cities, and the VBA seeks a Commission order to that effect. The VBA also asserts that it has standing to challenge the BFI's approval, pursuant to a previous Commission order.¹

On June 27, 2002, the BFI filed its Answer. The BFI agreed that the VBA had invoked the proper Commission Rule for filing its petition. The BFI also argued that the grant of standing to the VBA in the prior case cited was no precedent for granting the VBA standing in all instances of BFI action relating to credit union fields of membership. The BFI further asserts

¹ Petition of the Virginia Bankers Association, Case No. BFI970070 (1998).

that the VBA underrates the role of the Central Shenandoah Planning District Commission ("CSPDC") and the Shenandoah Valley Partnership ("SVP") in fostering common interests and interaction within the approved community. Finally, the BFI asserts that the DuPont application and filings demonstrate the approved field of membership is a well-defined local community within the meaning of § 6.1-225.23 B 3 of the Code of Virginia and requests that the VBA's petition be dismissed.

DuPont filed its Answer on July 18, 2002. DuPont disagrees with the VBA's petition and argues that the approval of its application by the BFI was in accordance with Virginia law and should be affirmed by the Commission. DuPont specifically points out that in May 2002, the National Credit Union Administration ("NCUA") approved five multiple county community credit unions, three of which had greater populations than DuPont's proposed expanded field of membership.² DuPont further notes that the NCUA approved Central Virginia Federal Credit Union's application for a community charter consisting of four counties, two cities, and a town. DuPont requested that the Commission take judicial notice of DuPont's application and supplemental information on file with the BFI. DuPont emphasizes that the counties and cities that make up the expanded field of membership are the same as those that make up the CPSDC and SVP. DuPont also asserts that it is aware of several applications approved by the NCUA in which planning districts formed the analytical template used to establish the required common interest and interaction. DuPont moves that the petition be dismissed and that the BFI's approval of DuPont's application be affirmed.

On July 19, 2002, the Virginia Credit Union League ("VCUL") filed a Motion for Leave to Participate and Comments. The VCUL claims that the VBA petition is actually seeking a declaratory judgment and is therefore properly handled under Rule 100 C (5 VAC 5-20-100 C)

² Section 6.1-225.23 B 3 of the Code of Virginia requires that in determining whether the proposed field of membership constitutes a "well-defined local community, neighborhood or rural district," the Commission "shall give consideration to the definition of the term that has been adopted by the National Credit Union Administration and become legally effective."

of the Rules. The VCUL notes that the VBA is seeking a declaration of broad policy questions without the presence, or even identification, of any of its members who would be harmed by the BFI's decision. Therefore, the VCUL argues, it should be permitted to participate in this case. The VCUL notes that, pursuant to Rule 10 (5 VAC 5-20-10) of the Rules, the Commission can also waive or modify provisions of its rules and that it should do so in this case to serve the ends of justice.

The BFI filed a notice of non-objection to the VCUL's Motion for Leave to Participate on July 26, 2002. On July 31, 2002, the VBA filed a Motion for Permission to File Response to the VCUL's Motion and a Response. The VBA submits that the VCUL's Motion should be denied. The VBA argues that it properly filed its Petition under Rule 100 B (5 VAC 5-20-100 B) of the Rules and that other interested parties are only permitted to participate under Rule 100 C (5 VAC 5-20-100 C) of the Rules.

The BFI filed a Motion to Strike [the VBA's] Filing and Response to Motion on August 9, 2002. The BFI argues that the VBA has simply submitted another legal argument, which is not permitted by the Rules. The BFI requests that the impermissible portions of the VBA's Response be stricken from the record unless and until the Commission authorizes the filing of briefs by all parties to the case pursuant to Rule 200 (5 VAC 5-20-200) of the Rules.

DuPont filed a Response to the VCUL's Motion for Leave to Participate, in which DuPont supported the VCUL's Motion. DuPont filed its Response on August 9, 2002. On August 13, 2002, the VCUL filed a Reply to the VBA's Response.

While this case was brought pursuant to Rule 100 B (5 VAC 5-20-100 B) of the Rules, we believe it is appropriate in this case to grant a waiver of that Rule and permit the VCUL to participate in this matter.³ The VBA has raised important public policy issues regarding our interpretation of a recently amended provision of the Virginia Credit Union Act, §§ 6.1-225.1 et

³ We therefore do not reach the question of whether other parties may be joined in a Rule 100 B (5 VAC 5-20-100 B) case. We note that the specific drafting by a complainant should not preclude the widest possible participation when our decision may have industry-wide impact.

seq. (Chapter 4.01 of Title 6.1) of the Code of Virginia. The Commission desires to have input from all interested parties before making what the VBA asserts is a decision that "will have implications far beyond the DuPont proposal."⁴

Section 6.1-225.23 B of the Code of Virginia provides, *inter alia*, that "Credit union membership shall be limited to persons within a specified field of membership, individuals within the immediate family or household of such persons, associations of such persons, other credit unions and employees of the credit union." Subsection 3 provides that a statutorily acceptable field of membership includes "[t]hose persons or organizations within a well-defined local community, neighborhood or rural district."

Section 6.1-225.23 B of the Code of Virginia further provides that "[t]he Commission shall in its discretion determine whether such a proposed field of membership constitutes a 'well-defined local community, neighborhood or rural district.' However, the Commission shall give consideration to the definition of the term that has been adopted by the National Credit Union Administration and become legally effective." Because we believe that briefing in this case is appropriate, the BFI's Motion to Strike portions of the VBA's Response will be dismissed as moot.

The Commission will therefore, pursuant to Rule 200 (5 VAC 5-20-200) of the Rules, order briefing by DuPont, the VCUL, and the BFI on the issues to be decided in this case. The issues briefed should include, but not be limited to, whether the VBA has standing to bring this complaint, what information should be considered by the Commission in making its decision in this case, and the weight to be given to the NCUA's definition of a "well-defined local community, neighborhood or rural district" and any interpretations by the NCUA of that term. Parties wishing the Commission to consider certain documentation as part of this case should attach copies to their brief and provide copies to all parties. Parties should also indicate whether

⁴ VBA Petition at 12 (Filed June 7, 2002).

they believe a hearing is necessary in this matter and, if requesting a hearing, provide reasons therefor.

Accordingly, IT IS ORDERED THAT:

- (1) The VCUL's Motion for Leave to Participate is Granted;
- (2) The BFI's Motion to Strike Portions of VBA's Response is Dismissed as Moot;
- (3) The parties to this case shall file briefs and specify whether a hearing is necessary in this matter by November 15, 2002; and
- (4) This matter is continued.